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Dated: October 6, 2008

Signature: 

(Daryl K. Neff)

Docket No.: SONYJP 3.3-337
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Matsui et al.

Application No.: 10/529,165

Group Art Unit: 2618

Filed: September 30, 2005

Examiner: J. N. Young

For: WIRELESS COMMUNICATION TERMINAL
AND WIRELESS COMMUNICATION METHOD

APPEAL BRIEF

MS Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Applicants hereby file this brief on Appeal to appeal from the final rejection of claims 1 and 3 mailed January 29, 2008, and further pursuant to the Notice of Appeal filed by Applicants on May 5, 2008.

REAL PARTY IN INTEREST

The real party in interest is Sony Corporation, a corporation of Japan, assignee of the present application

RELATED APPEALS AND INTERFERENCES

No prior or pending appeals, interferences, or judicial proceedings are known to be related to, directly affect, or be directly affected by, or have a bearing on, the Board's decision in the present appeal. 10/09/2008 MGE BREM1 00000030 121095 10529165

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STATUS OF CLAIMS

Claims 1 and 3 stand rejected and are the subject of the present appeal.

Claims 2 and 4 were cancelled by previous amendment.

STATUS OF AMENDMENTS

No previously submitted amendments await entry at this time.

SUMMARY OF CLAIMED SUBJECT MATTER

As recited in claim 1, a wireless communication terminal 100 (FIG. 2) includes a "selecting means", i.e., receiver unit 103 (FIG. 2) "for selecting a first base station, e.g., base station 203 (FIG. 1; ¶[0042]) with which to communicate." For example, the receiver unit can "select[] the signal whose frequency corresponds to that which is specified by the frequency synthesizer 105" (¶[0049]). Several base stations, e.g., base stations 203, 204, 205 (FIG. 1) can be broadcasting the same stream data simultaneously ([¶[0066]), but the reception level from each base station can vary. (¶[0066-0067]). Thus, the selecting means can, initially, "select a first base station with which to communicate" (¶[0019]). A detecting means, e.g., receiver unit 103 (¶[0063]) is provided "for detecting a radio wave reception level of the first base station selected by said selecting means." Thus, the detecting means can determine a reception level from the first selected base station. (¶[0019], [0063]).

A "selection controlling means", e.g., main controller 120 (¶[0063], [0073]; FIG. 2) can control an operation of the selecting means. Thus, by monitoring the radio wave reception level from the receiver unit (¶[0063]), the "selection controlling means" can determine "if the detected radio wave reception level from said detecting means drops below a predetermined level during reception of predetermined data" (¶[0064]). The selection controlling means can "then cause[] said selecting means (receiver unit 103) "preferentially to select a second base station" (¶[0068]), e.g. a base station other than base station 203, that is, another one of the base stations 204, 205, 206 in the network

200 (FIG. 1), such as by adjusting the frequency output by frequency synthesizer 105 to adjust the selecting means (receiver unit 103). (§[0068]) The selection controlling means does this so as to select a second base station "which is already broadcasting said predetermined data to a plurality of wireless communication terminal within a cell of said second base station (§[0038], [0045], [0066]) and which offers a radio wave reception level higher than said predetermined level." (§[0066], [0068]). Moreover, the preferential selection of the second base station is "based on the radio wave reception level of each base station selected and on the ongoing broadcasting of said predetermined data therefrom." (*Id.*)

Finally, as recited in claim 1, the "predetermined data is at least one of video streaming data and audio streaming data" (§[0039]) which is being multicast to the terminal from at least said first base station and said second base station," as indicated, for example, in FIG. 1 and in corresponding description at §[0066] 11.1-4 which describes "base stations which are emitting radio waves . . . and which are already distributing the stream data in question" and similarly described at §[0077] 11.1-4.

Claim 3 recites a wireless communication method, e.g., at §[0070] *et seq.* for causing predetermined data to be streamed to a terminal 100 (FIG. 1) from a network 200 of base stations, e.g., base stations 203, 204, 205, 206. (§[0030]) In such wireless communication method, a first base station, e.g., a base station 203 (§[0030]) is selected with which to communicate, such as by applying a variable output of a frequency synthesizer 105 to a receiver unit 103 (FIG. 2). (§[0049]) The base station is selected with which the wireless communication terminal is to communicate. The only device recited in claim 3 as communicating with the base station is

the wireless communication terminal, for example, as the receiver of streaming data multicast thereto by base stations.

A radio wave reception level of the first base station "selected by said selecting means" can then be detected, such as at receiver unit 103, as indicated at ¶[0072]. Next, "if a radio wave reception level of said first base stations drops below a predetermined level", as described at ¶[0073], a second base station can then be preferentially selected [for communication with the wireless communication terminal] which is already broadcasting predetermined data (¶[0077], S105; FIG. 3) to a plurality of wireless communication terminals within a cell of said second base station and which offers a radio wave reception level higher than said predetermined level (*Id.*, S103; FIG. 3), based on the radio wave reception level of each base station selected and on the ongoing broadcasting of said predetermined data therefrom (*Id.*);

Finally, as recited in claim 3, the "predetermined data is at least one of video streaming data and audio streaming data (¶[0039]) which is being multicast to the terminal from at least said first base station and said second base station." (¶[0077]-[0078])

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

1. Whether claims 1 and 3 are unpatentable under 35 U.S.C. §112, first paragraph for failing to comply with the written description requirement; and

2. Whether claims 1 and 3 are unpatentable under 35 U.S.C. § 103(a) over *Fukawa* (U.S. Patent No. 5,568,654) in view of *Tymes et al.* (U.S. Patent No. 5,668,803) and *Mitchell* (U.S. Patent No. 6,741,841).

ARGUMENT - REJECTIONS UNDER 35 U.S.C. §112

The rejection of claims 1 and 3 under 35 U.S.C. §112 should be withdrawn because claims 1 and 3 are fully supported

by the written description of the application. In the first instance, ¶[0014] of the specification describes a selecting means for selecting a base station with which to communicate (¶[0019]), e.g., a first base station 203 [0041]. That it is a particular base station, that is, a "first" base station is supported by language in ¶[0019], viz. "[w]here the wireless communication terminal...is used to receive predetermined data delivered via a base station, the radio wave reception level from *that* base station is monitored during data delivery." The detecting means for detecting a radio wave reception level of the first base station selected by said selecting means is supported by the same radio wave ¶[0019].

Further, each of a plurality of base stations including base stations 203 and 204 can broadcast the same stream data to the wireless communication terminals, as indicated in ¶[0038]. Further, ¶[0039] indicates that the "stream data can be constituted illustratively by audio and video content." Written description support for the data "being multicast to the terminal from at least said first base station and said second base station," is provided, for example, at ¶[0066] 11.1-4 which describes "base stations which are emitting radio waves . . . and which are already distributing *the stream data* in question." Clearly, claims 1 and 3 are fully supported by written description in the application.

ARGUMENT- REJECTIONS UNDER 35 U.S.C. §103(a)

ARGUMENT - CLAIM 1

The final office action (hereinafter "final OA") dated January 29, 2008 asserts that *Fukawa* teaches elements of claim including a wireless communication terminal having a selecting means for selecting a first base station with which to communicate. The examiner further asserts that the wireless communication terminal includes a detecting means for detecting

a radio wave reception level of the first base station selected by said selecting means, and has a selection controlling means which, if the detected radio wave reception level from said detecting means drops below a predetermined level during reception of said predetermined data, then causes the selecting means preferentially to select a second base station that is broadcasting the predetermined data to plurality of wireless communication terminal within a cell of the second base station and which offers a radio wave reception level higher than said predetermined level. Also, the examiner asserts the selection controlling means of the wireless communication terminal does so based on the ongoing broadcasting of the predetermined data and on the radio wave reception level.

These assertions are in error. The passages of *Fukawa* cited by the examiner (Abstract, col.1 ll.26-67; col.2 1.52-col.3 1.12; col.12 ll.47-65) as teaching these elements of claim 1 describe the opposite of the recited operation. Fundamentally, *Fukawa* fails to teach a "detecting means" in a wireless communication terminal for "detecting a radio wave reception level of the first base station selected by said selecting means." In contrast, in the *Fukawa* system, each of a plurality of base stations determines a radio wave reception level of a signal being transmitted by the mobile station, and a "control station selects one of the base stations whose received signal level is highest." (*Fukawa*, col.1 ll.34-35; col.3 ll.3-6; col.12 ll.52-58; col.12 1.66-col.13 1.3). Thus, while claim 1 recites detecting means in a wireless communication terminal for detecting a reception level of a selected base station, *Fukawa* recites the detection by base stations of reception levels of a signal from a mobile station.

In addition, claim 1 recites that a selection controlling means of the wireless communication terminal causes the selecting means preferentially to select a second base

station "based on the radio wave reception level of each base station selected and on the ongoing broadcasting of said predetermined data therefrom." In contrast, in *Fukawa* a control station 18 separate from any of the mobile stations of the network receives the reception levels of the mobile station's signal from the base stations. (Col.12 11.51-65). That control station 18, which as shown in FIG. 1, is connected to switching unit 17 via a leased line 21 (FIG. 1) is not a wireless communication terminal or component of a wireless communication terminal. As *Fukawa* describes, for example, at col.13 11.22-32, a control station 18, not a selection controlling means of a wireless communication terminal, controls the handoff of an active communication by a mobile station 120 from one base station to another. *Fukawa* in no way teaches or suggests "selecting means of a wireless communication terminal to preferentially select a second base station which is broadcasting said predetermined data to a plurality of wireless communication terminal within a cell of said second base station."

As conceded by the examiner (final OA, p. 5) "*Fukawa* does not explicitly teach a wireless communication terminal that checks whether a new base station is already transmitting the particular data needed by the receiving device." *Fukawa* also does not "implicitly" teach this element of claim 1. The examiner has not pointed to any passage of *Fukawa* which would implicitly teach preferential selection by a wireless communication terminal of a second base station that is already broadcasting predetermined data needed by the mobile station prior to a selecting means switching the mobile station from a first base station to such second base station.

The examiner asserts that *Tymes* makes up for the deficiency of *Fukawa*, in that selection of a base station is made by the wireless communication terminal based on

"check[ing] each base station selected for the radio wave reception level thereof and for ongoing broadcasting of said predetermined data therefrom." This assertion is in error.

The cited passage of *Tymes* at col.5 ll.18-23 does not support this assertion of the final OA. The passage describes "recording the degree to which the incoming package from a remote unit correlate...." Such recording is performed by the receiver of packets from the remote unit, i.e., a base station (col.3 ll.5-col.4 l.4, col.4 ll.22-24). Stated another way, in *Tymes*, the base station checks the reception level of a remote unit, e.g., a wireless communication terminal. Several base stations can generate correlation data this way (col.5 l.21). The data generated at each base station is compared to permit the "best station" to be selected (col.5 ll.21-23). Such operation described in *Tymes* is the opposite of the operation required by claim 1 in which the wireless communication terminal detects a radio wave reception level of the base station.

The final OA concedes that Fukuwa and *Tymes* "do not explicitly teach . . . a wireless communication terminal having predetermined data [which] is at least one of video streaming data and audio streaming data which is being multicast to the terminal." Applicants traverse the rejection in that the elements recited in claim 1 are neither explicitly nor implicitly taught by *Fukawa* and *Tymes*.

Nothing in *Mitchell* makes up for the lack of teachings in *Fukawa* and *Tymes* of a wireless communication terminal having a detecting means and selection controlling means for preferentially selecting a second base station which is already broadcasting predetermined data. The examiner does not assert that *Mitchell* teaches and *Mitchell*, in fact, does not teach a wireless communication terminal having a selection controlling means capable of selecting a second base station

"based on the radio wave reception level of each base station selected and on the ongoing broadcasting of said predetermined data therefrom."

ARGUMENT - CLAIM 3

Similar to the above argument, the rejection of claim 3 under 35 U.S.C. §103(a) should be withdrawn because the combination of *Fukawa*, *Tymes* and *Mitchell* fails to teach a wireless communication method in which selection of a base station with which a wireless communication terminal is to communicate is performed by detecting a radio wave reception level of a first base station, e.g., by receiver unit 103 of terminal, and, "if a radio wave reception level of the first base station drops below a predetermined level, then selecting preferentially a second base station which is already broadcasting predetermined data to a plurality of wireless communication terminal." As argued above, nothing in the combination of *Fukawa*, *Tymes* and *Mitchell* teaches selecting a second base station with which a wireless communication terminal is to communicate "based on the radio wave reception level of each base station selected and on the ongoing broadcasting of said predetermined data therefrom." *Fukawa* and *Tymes* merely teach systems in which base station selection is controlled by a plurality of base stations detecting reception levels of a mobile terminal and a particular base station selecting a mobile terminal with which to communicate based on the reception level of the mobile terminal. (See *Fukawa*, col.1 11.34-45; col.3 11.3-6; col.12 11.52-58; col.12 1.66-col.13 1.3; *Tymes*, col.5 11.18-23; col.3 1.65-col.4 1.4; col.4 11.22-24).

Mitchell does not make up for the lack of teachings in *Fukawa* and *Tymes* regarding this recited operation in claim 3. The examiner does not assert that *Mitchell* teaches and *Mitchell*, in fact, does not teach "selecting a second base

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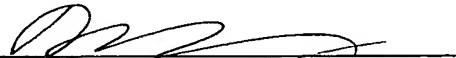
station based on the radio wave reception level of each base station selected and on the ongoing broadcasting of said predetermined data therefrom."

CONCLUSION

This Honorable Board should reverse the rejections of claims 1 and 3. This Honorable Board should withdraw the finality of the Office Action mailed January 29, 2008.

Dated: October 6, 2008

Respectfully submitted,

By 
Daryl K. Neff
Registration No.: 38,253
LERNER, DAVID, LITTENBERG,
KRUMHOLZ & MENTLIK, LLP
600 South Avenue West
Westfield, New Jersey 07090
(908) 654-5000
Attorney for Applicants

CLAIMS APPENDIX

1. A wireless communication terminal comprising:
selecting means for selecting a first base station with which to communicate;

detecting means for detecting a radio wave reception level of the first base station selected by said selecting means; and

selection controlling means which, if the detected radio wave reception level from said detecting means drops below a predetermined level during reception of predetermined data, then causes said selecting means preferentially to select a second base station which is already broadcasting said predetermined data to a plurality of wireless communication terminal within a cell of said second base station and which offers a radio wave reception level higher than said predetermined level, based on the radio wave reception level of each base station selected and on the ongoing broadcasting of said predetermined data therefrom;

wherein said predetermined data is at least one of video streaming data and audio streaming data which is being multicast to the terminal from at least said first base station and said second base station.

2. (canceled)

3. A wireless communication method for causing predetermined data to be streamed to a terminal from a network of base stations, said wireless communication method comprising the steps of:

selecting a first base station with which to communicate;

detecting a radio wave reception level of the first base station selected by said selecting means; and

if a radio wave reception level of said first base stations drops below a predetermined level, then selecting preferentially a second base station which is already broadcasting predetermined data to a plurality of wireless communication terminal within a cell of said second base station and which offers a radio wave reception level higher than said predetermined level, based on the radio wave reception level of each base station selected and on the ongoing broadcasting of said predetermined data therefrom;

wherein said predetermined data is at least one of video streaming data and audio streaming data which is being multicast to the terminal from at least said first base station and said second base station.

4. (canceled)

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EVIDENCE APPENDIX

None

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RELATED PROCEEDINGS APPENDIX

None